




U.S. Department
of Transportation
Federal Aviation
Administration

Southwest Region
Arkansas, Louisiana,
New Mexico, Oklahoma
Texas

Federal Aviation Administration
Office of the Regional Counsel, ASW-7
2801 Meacham Blvd
Fort Worth, TX 76137

JUN 16 2010

FEDERAL EXPRESS, REGULAR & CERTIFIED RETURN RECEIPT
REQUESTED

Mr. Joseph B. Kirbow


Case No. 2010SW090036

EMERGENCY ORDER OF REVOCATION

Under 49 U.S.C. § 46105(c), the Administrator has determined that an emergency exists related to safety in air commerce and that immediate action to revoke the airman certificate that you hold is required. The reasons for this determination are set forth in the paragraph below entitled "Determination of Emergency."

Based on an investigation and all evidence presently before the Administrator, the Administrator finds that:

1. You are now, and all times pertinent herein were the holder of Airman Certificate No. 002789756 with Private Pilot privileges.
2. On or about March 13, 2010, you acted as Pilot in Command of Civil Aircraft N134PS, a Diamond DA40 on a flight from Beaumont, Texas to an area over Crystal Beach, Texas and back to Beaumont.
3. During the flight you were accompanied by two passengers.
4. When you were asked by one of your passengers where you were going, you replied that you were going to "buzz the beach."
5. During the flight on the way to Crystal Beach, you dove down to fly over fishermen wading in the surf.
6. After you arrived at Crystal Beach, you made multiple passes over a group of occupied vehicles and numerous other people located on the beach.
7. You operated the aircraft at altitudes lower than 50 feet over vehicles and individuals on these passes.

8. At numerous times, the aircraft was as low as 15 to 30 feet directly over vehicles and individuals on the beach.

9. On one pass, you banked and made a steep descent directly toward an individual on the beach.

10. You flew so low over him that the wind from your aircraft blew his hat off on two different passes.

11. That individual saw you smiling and one of your passengers waving during the passes.

12. You flew so close to another individual on the beach that you broke his fishing pole when your aircraft snagged his fishing line.

13. You were approximately 15 feet above the fisherman at the time you broke his fishing pole.

14. Another individual indicated that you flew at an altitude of 15 to 20 feet above him as he was among others in a group of vehicles.

15. He indicated that you were so low that he made eye contact with you and that he could see that you smiled at him.

16. During the flight, one of your passengers asked you if you could get in trouble for flying so low over people on the beach.

17. You replied that you had buzzed the beach many times and that you would not get in trouble for it.

18. After the flight upon your learning that several complaints had been made with local law enforcement, you telephoned that passenger and told her she was "never on that plane."

19. When you next spoke to the passenger you told her that she should go along with the story that the aircraft was experiencing engine trouble.

20. You laughed each time you made a low pass that caused people on the beach to duck in fear of being hit.

21. Your actions as described above were reckless so as to endanger the life or property of another.

By reason of the facts and circumstances set forth above, you lack the qualifications to be the holder of an airman certificate.

By reason of the foregoing circumstances, you violated the following sections of the Federal Aviation Regulations:

- a. Section 91.119(a) in that you operated an aircraft below an altitude that if a power unit failed you could effect an emergency landing without undue hazard to persons or property on the surface;
- b. Section 91.119(b) in that you operated an aircraft over a congested area of a city, town or settlement, or over an open air assembly of persons at an altitude less than 1000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft;
- c. Section 91.119(c) in that you operated an aircraft at an altitude less than 500 feet from persons, vehicles and structures; and
- d. Section 91.13(a) in that you operated an aircraft in a careless or reckless manner so as to endanger the life or property of another.

As a result of the foregoing, the Administrator finds that you lack the qualifications necessary to hold an airman certificate. He therefore has determined that safety in air commerce or air transportation and the public interest require the revocation of the above-described certificate. The Administrator further finds that an emergency requiring immediate action exists with respect to safety in air commerce or air transportation. Accordingly, this Order is effective immediately.

IT IS THEREFORE ORDERED, pursuant to the authority vested in the Administrator by 49 USC Sections 44709 and 46105(c), that:

- (1) Airman Certificate No. 002789756 with Private Pilot privileges and any other airman certificate that you hold be and they hereby are revoked;
- (2) You immediately surrender Airman Certificate No. 002789756 with Private Pilot privileges and any other airman certificate that you hold by mail or delivery to the Regional Counsel at DOT-FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; and
- (3) No application for a new airman certificate shall be accepted from you, nor shall any such certificate be issued to you for a period of one year from the date of service of this Order

If you fail to surrender your certificate immediately, you will be subject to further legal enforcement action, including a civil penalty of up to \$1,100 a day for each day you fail to surrender it.

DETERMINATION OF EMERGENCY

Under 49 U.S.C. §46105(c), the Administrator has determined that an emergency exists related to safety in air commerce. This determination is based on your lack of qualification to hold Airman Certificate No. 002789756 with Private Pilot privileges and any other airman certificate because of the nature and seriousness of the violations set forth in this order.

On or about March 13, 2010, you acted as pilot in command of a civil aircraft while carrying passengers. You operated the flight with the direct intention of violating the Federal Aviation Regulations by operating dangerously close to people on the ground. Such an operation demonstrates that you are an airman who is unwilling to comply with basic regulatory requirements governing flight operations.

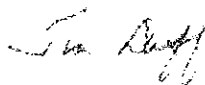
Certificate holders who intentionally violate the privileges of their certificates for whatever purpose compromise safety. Your willingness to disregard the requirements of the regulations while putting your passengers and those on the ground at risk shows that you cannot be trusted to hold the certificate issued to you.

Accordingly, the Administrator has determined in protection of the public that safety in air commerce requires the immediate revocation of the Airman Certificate No. 002789756 with Private Pilot privileges and any other airman certificate you hold. Emergency action in this case is a safety measure that provides immediate protection to the public. Moreover, it is long standing FAA policy to declare an emergency under 49 U.S.C. §46105(c) when, in circumstances such as those alleged in this order, the Administrator determines that the certificate holder lacks the qualifications to hold an airman certificate.

In conclusion, the Administrator has determined that under the criteria of FAA Order 2150.3B, Chapter 6, pages 7-10 and Chapter 7, pages 1-3 your conduct as alleged in this order demonstrates that you presently lack the degree of care, judgment, and responsibility required of a certificate holder. The Administrator therefore finds in accordance with 49 U.S.C. §46105(c) and the guidance found in FAA Order 2150.3B, Chapter 6, pages 7-10 and Chapter 7, pages 1-3 that the exercise of the privileges of your certificate(s) while any proceedings related to the issuance of this Order are pending is contrary to the interest of safety in air commerce.

You may appeal from this Order in accordance with the Appeal procedures set forth below.

Lynette Word
Regional Counsel
Southwest Region

By: 
Tim Duff
Attorney
(817) 222-5099
(817) 222-5945 (fax)
tim.duff@faa.gov

APPEAL

You may appeal from this Emergency Order within ten (10) days from the date of its service, which is the date set out above ~~APR 16 2010~~ with the Office of ~~Administrative Law Judges~~ Administrative Law Judges; National Transportation Safety Board; Room 4704; 490 L'Enfant Plaza East, SW; Washington, DC 20594 (telephone (202) 314-6150). The National Transportation Safety Board's (NTSB's) Rules of Practice in Air Safety Proceedings, 49 C.F.R. part 821, subpart I apply to appeals of Emergency and Other Immediately Effective Orders. An executed original and three (3) copies of your Notice of Appeal must be filed with the NTSB. If you appeal, a copy of your Notice of Appeal also must be served on the FAA's attorney at the address listed in this Emergency Order. If you file an appeal to the NTSB, a copy of this Emergency Order will be filed with the NTSB as the Administrator's Complaint in that proceeding.

You may also seek review of the FAA's determination that an emergency exists in this case, which makes this order immediately effective. You may request such review in a written petition filed within two days after your receipt of this order. Petitions for review of FAA emergency determinations must be served, with a copy of the FAA's emergency order attached to the petition, by facsimile or by an expedited means that ensures next-day delivery: 1) on the Office of Administrative Law Judges; National Transportation Safety Board; Room 4704; 490 L'Enfant Plaza East, SW; Washington, DC 20594 (facsimile (202) 314-6158); and 2) simultaneously and by the same means, on the FAA's attorney at the address provided in this order (facsimile (817) 222-5945)). The NTSB rules of practice that apply to its review of the FAA's emergency determinations are available at 49 C.F.R. § 821.54 or through the NTSB's website at <http://www.ntsbt.gov/alj/legal.htm>.

Whether or not you elect to appeal from this Emergency Order, you must immediately surrender your airman certificates to Tim Duff at the address listed in this Emergency Order. In the event that you have lost or destroyed your certificates, you will be required to execute a sworn declaration setting forth the circumstances that make you unable to surrender your certificates.

ENCLOSURES: FAA Order 2150.3B, Chapter 6, pages 7-10 & Chapter 7, pages 1-

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FAA Order 2150.3A, Appendix 4, page 19